

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

HAROLD J. SCOTT,

Plaintiff,

v.

9:13-CV-605

**PETER FREDERICK, CAPTAIN J.
FACTEAU, MRS. EDNA AIKEN, RANDY
NICHOLS, and ALBERT PRACK,**

Defendants.

DECISION & ORDER

Thomas J. McAvoy, Senior District Judge.

This *pro se* civil rights action pursuant to 42 U.S.C. § 1983, alleging violations of Plaintiff's due process rights under the Fourteenth Amendment of the United States Constitution during a prison disciplinary hearing, was referred to the Honorable Randolph F. Treece, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

In the Report-Recommendation, dated August 28, 2014, Magistrate Judge Treece recommends that Defendants' motion to dismiss for failure to state a claim upon which relief can be granted, *dk. # 15*, be granted in part and denied in part. Magistrate Judge Treece recommends that the motion be: granted with respect to Defendants Edna Aiken, Captain J. Facticeau, and Randy Nichols; granted without prejudice with respect to Defendant Albert Prack; granted with respect to Plaintiff's claims that Defendant Peter Frederick violated his due process rights by failing to provide sufficient notice of the

disciplinary re-hearing, failing to record the entire hearing, and improperly re-starting the hearing; and denied with respect to Plaintiff's claims that Defendant Frederick denied him the opportunity to present a defense and for being biased.

Plaintiff filed a timely objection to the Report-Recommendation pursuant to 28 U.S.C. § 636(b)(1). When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which the objection is made." See 28 U.S.C. §636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having considered the issues raised in the Plaintiff's objections, this Court has determined to accept the recommendation of Magistrate Judge Treece for the reasons stated in the Report-Recommendation.

It is therefore ordered that:

(1) Plaintiff's Objections, dkt. # 30, to the Report-Recommendation of Magistrate Judge Treece, dkt. # 25, are hereby OVERRULED;

(2) The Report-Recommendation is hereby ADOPTED;

(3) The Defendants' motion to dismiss, dkt. # 15, is hereby GRANTED in part and DENIED in part, as follows:

- a. the motion is GRANTED as to Plaintiff's claims against Defendants Aiken, Facteau and Nicholas and each of these Defendants are DISMISSED from the action;
- b. the motion is GRANTED without prejudice as to Plaintiff's claim against

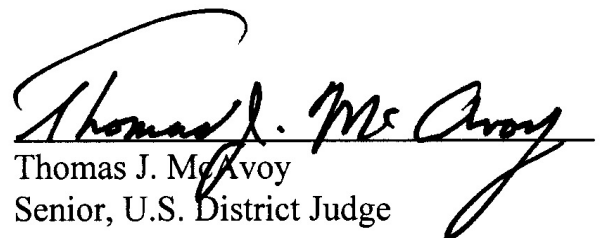
Defendant Prack;

c. the motion is GRANTED with respect to Plaintiff's claims that Defendant Frederick violated his due process rights by failing to provide subsequent notice of the re-hearing, failing to record the entire hearing, and improperly re-starting the hearing; and

d. the motion is DENIED with respect to Plaintiff's claims that Defendant Frederick denied him the opportunity to present a defense and for being biased.

Plaintiff may file an amended complaint within 30 days of the date of this Order.

IT IS SO ORDERED.


Thomas J. McAvoy
Senior, U.S. District Judge

Dated: January 8, 2015